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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Chet Michael Wilson, individually and as a representative of the class,

Plaintiff,

v.

Mountainside Fitness Acquisition LLC,

Defendant.

Case No. 2:25-cv-01481-MTL

PLAINTIFF'S RESPONSE TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant cites *El Sayed v. Naturopathica Holistic Health, Inc.*, 2025 WL 2997759 (M.D. Fla. 2025). *See* ECF 22. *El Sayed* primarily agrees with the assertion in *Davis v. CVS Pharmacy, Inc.*, that "the statutory text here is clear." *El Sayed*, 2025 WL 2997759, at *2 (quoting *Davis*, 2025 WL 2491195, at *1 (N.D. Fla. 2025)). As explained previously, *Davis*'s reading of "call" improperly relies on modern parlance rather than "evidence of [a] term's meaning at the time of [a statute]'s adoption." ECF 17 at 14–15 (quoting *New Prime Inc. v. Oliveira*, 586 U.S. 105, 114 (2019)). And Ninth Circuit precedent forecloses its interpretation, by holding that "the ordinary, contemporary, common meaning" of "call" in the TCPA includes text messages. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 953–54 & n.3 (9th Cir. 2009); *see* ECF 17 at 13.

Through *El Sayed*, Mountainside also makes a brand new argument: It asserts that a provision added to the TCPA in 2018 distinguishes between calls and texts. ECF 22 at 1–2 (citing 47 U.S.C. § 227(e)(8)(A)–(B)). But that argument fails.

First, § 227(e)(8) doesn't change the meaning of § 227(c). The 2018 legislation says that nothing therein "shall be construed to modify, limit, or otherwise affect any rule or order adopted by the [FCC] in connection with [the TCPA]." Consolidated Appropriations Act of 2018, Pub. L. No. 115–141, § 503, 105 Stat. 348, 1094. So Congress disavowed any intent to disturb the FCC's longstanding interpretation that "call" includes text messages. And anyway, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998). That's especially true here; text messages were ubiquitous in 2018 but nonexistent in 1991, so it's natural for them to be discussed more specifically in the later-enacted statute.

Second, even if those later-added provisions *were* relevant, they would merely confirm that texts *are* calls in the lexicon of the TCPA. Section 227(e)(8) prohibits false or misleading "*caller* identification information," defined as information about the source of either "[1] a call made using a voice service or [2] a text message sent using a text messaging service." 47 U.S.C. § 227(e)(8)(A) (emphasis added). So it classifies a "text message" as something that is done by a "caller," just like a traditional voice call is.

RESPECTFULLY SUBMITTED this 29th day of October, 2025,

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2025, a true and correct copy of the foregoing notice of supplemental authority was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: October 29, 2025

By: /s/ Michael Skocpol
Michael Skocpol